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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/629,356	07/29/2003	Kenji Ishida	2552-000056	6234
27572 7590 02/08/2007 HARNESS, DICKEY & PIERCE, P.L.C. P.O. BOX 828 BLOOMFIELD HILLS, MI 48303			EXAMINER WARREN, DAVID S	
			ART UNIT	PAPER NUMBER
			2837	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		02/08/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/629,356

Applicant(s)

ISHIDA ET AL.

Examiner

David S. Warren

Art Unit

2837

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 November 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 9 and 12 is/are allowed.
- 6) ☒ Claim(s) 1-8, 10 and 11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                            |                                                                                         |
|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                           | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1, 4, 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Applicant amended these claims as follows:  
“determine...changes based upon a predefined algorithm defined within the determining device that specifies conditions under which said imaging changes within the musical composition are deemed to exist.” In other words, the algorithm specifies conditions under which imaging changes exist. This does not appear to be in concert with Applicant’s intention or remarks (or specification). The Applicant suggests fig. 4 as a “preferred embodiment of a predefined algorithm.” It appears to the Examiner that fig. 4 shows an algorithm that determines if control codes (e.g., tempo, volume, etc.) are constant. Specifying conditions under which changes exist appears to be quite different than determining if control codes are constant. Are control codes synonymous with conditions? Furthermore, the specification is silent as to “conditions” that may “exist.” Clarification and/or correction is required. For the sake of the rejection that follows, the Examiner is interpreting the claim language in view of Applicant’s fig. 4.

***Claim Rejections - 35 USC § 103***

*As stated in the previous Office Action (mailed August 21, 2006):*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shimatani (JP 10-260681) in view of Mizuno (5,179,240). Regarding claims 1, 3, and 4, Shimatani discloses the use of determining if control codes have changed (paragraph [0019] – “discriminates” and “investigates” are equivalent to “determining”) and a re-writing device to re-write musical composition data so that the composition state is constant (paragraph [0011] – “no sense of incongruity” is equivalent to “constant”). Regarding the newly added amended material (as best as can be understood, see the §112 rejection supra), the Examiner maintains that steps S5 through S9 put forth an algorithm for determining if a change in control code data has occurred, and if so, rewriting the data. Shimatani does not disclose the use of determining whether or not the imaging (“imaging” is synonymous with “pan” or “stereo positioning”) in the musical composition has changed. Mizuno discloses that panning

(i.e., imaging) can be controlled by controlling the volume for each speaker (col. 6, lines 5 – 8). In other words, by controlling volume, imaging is controlled. It would have been obvious to one of ordinary skill in the art to combine the teachings of Shimatani and Mizuno to obtain a data editing device that determines whether image data has changed and, if so, rewrites the image data to make the data “constant.” The motivation for making this combination, as suggested by Shimatani, would be to “automatically alter the whole playing data without a feeling of physical disorder” (i.e., abrupt changes in stereo imaging could be irritating and/or annoying and difficult for a novice to correct).

5. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shimatani in view of Cakewalk (Cakewalk Professional for Windows 2.0. User's Guide. 1992). The teachings of Shimatani have been discussed supra with respect to independent claim 1. Regarding claim 2, Shimatani does not teach the use of controlling, determining changes in, nor re-writing tempo data control. The Cakewalk User's manual discloses volume (pages 72 and 73 – in MIDI implementation “velocity” is synonymous with “volume”) and tempo (pages 105 – 108) wherein the values may be changed and the device controlled in accordance with the changed value. It would have been obvious to one of ordinary skill in the art to combine the teachings of Shimatani and the Cakewalk User's Manual to obtain a device that maintains constant control codes on the basis of a detected changed value. The motivation for making this combination is taught by Shimatani, such a device would allow a user to avoid “a feeling of physical disorder” by making the music all of a similar tempo and/or volume (see Shimatani's

Abstract), since it is well-known that abrupt changes in tempo and/or volume can be irritating.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 5 – 8, 10, and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Shimatani, et al. (JP Publication No. 10-260681). Regarding claims 5 and 6, Shimatani discloses a determining device to determine if control codes for controlling effects have been changed in the source data (see paragraphs [0004] and, if so, changing the control codes (paragraph [0026])). Regarding the newly added amendment material, steps S5 through S9 (of Shimatani) are deemed to be an algorithm that determines whether or not acoustic control codes are contained in the source musical composition data (specifically see step S7). Regarding claim 7, Shimatani discloses the use of determining that control data is contained in the source file (discussed supra) and if that control data has changed to delete it (paragraph [0019] – “eliminate” is synonymous with “delete”). Regarding the newly added amendment material, in the English translation Abstract, Shimatani discloses erasing data replacing data, the Examiner maintains that any automated process to perform these functions is

deemed to be an algorithm. Regarding claim 10, as stated supra, Shimatani discloses the use of determining if control data changes (e.g., volume by user input), and if so, then re-writes the control data so that the entire composition has the same (i.e., constant) volume – see paragraphs [0026] through [0030]. Regarding the newly added amendment material, step S8 (“change the parameter data”) is deemed to be synonymous with “rewriting.” Regarding claims 8 and 11, Shimatani detects changes in the source data and re-writes that data, the Examiner interprets this to mean “transmitting” the data to be changed.

#### ***Allowable Subject Matter***

8. Claims 9 and 12 are allowed. For reasons for allowance of these claims, please refer to the previous Office Action (mailed August 21, 2006).

#### ***Response to Arguments***

9. Applicant's arguments filed November 16, 2006 have been fully considered but they are not persuasive. As stated in the §112 rejection, the Examiner could not determine the intent of the amendment (of claims 1, 4, and 10). However, even when interpreting the language in accordance with Applicant's fig. 4, the amendment does not place these claims in condition for allowance. The Applicant argues that the “present invention is preconfigured to seek out, and alter if necessary, any parameters that meet

certain criteria, with the objective to produce a musical composition where the reproduction state is constant. This is precisely the intent of Shimatani (to avoid a feeling of “physical disorder” – see Abstract). The Examiner understands that, perhaps the intent of Applicant’s invention is that if a change in a control code occurs (e.g., an increase in tempo or volume) to then make it constant. The difference between Shimatani and the instant invention is that a user initiates the change. But, as understood by the Examiner, once the change has occurred, Shimatani processes identical steps. The Applicant also argues that “[t]o achieve the same result with Shimatani, the user would need to manually specify each of the desired parameters and perform search and replace operation on each.” The Examiner concurs in part. Yes, the user would need to specify each parameter, but the mere fact of using a “predefined algorithm” does not obviate the user. In other words, once the user has specified the parameter, a predefined algorithm will perform the search and replace operation. As stated supra, steps S5 – S9 are deemed to be an predefined algorithm. Furthermore, as understood by the Examiner, these steps are not performed by a user by are “processor” steps. Regarding claim 5, the Applicant argues that Shimatani does not disclose determining whether acoustic control codes are contained in source musical composition data. Step S7 states “does parameter exist?” The Examiner deems this to be determining whether control codes exist.

10. The Applicant has successfully overcome the §101 rejection in the previous Office Action.



***Conclusion***

**11. THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

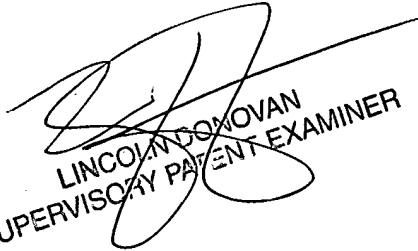
Any inquiry concerning this communication or earlier communications from the examiner should be directed to David S. Warren whose telephone number is 571-272-2076. The examiner can normally be reached on M-F, 9:30 A.M. to 6:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lincoln Donovan can be reached on 571-272-2837. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2837

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

dsw

  
LINCOLN DONOVAN  
SUPERVISORY PATENT EXAMINER